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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,410	02/10/2004	Kouji Amitani	04082/LH	2384
1933 7590 04/02/2007 FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 220 Fifth Avenue 16TH Floor NEW YORK, NY 10001-7708			EXAMINER SONG, HOON K	
			ART UNIT 2882	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	04/02/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/776,410	Applicant(s) AMITANI, KOUJI	
	Examiner Hoon Song	Art Unit 2882	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/2/06, 11/2/05, 4/5/05</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

Claim 5 is objected to because of the following informalities:

In claim 5 at line 1-2, "the second" should read --the second detector--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Ohara (US 2004/0151277A1).

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Ohara (US 2004/0131145A1).

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Amitani et al. (US 2004/0109530A1).

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Amitani et al. (US 7103140B2).

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Ohara et al. (US 7027556B2).

The applied references have a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claim 1, Ohara or Amitani teaches a radiographing apparatus for mammography, comprising: a radiographing main body including: a radiation source to emit radiation; a breast table on which a breast to be radiographed is placed, the breast table located opposite to the radiation source, and a first detector supporting rack to support a detector to receive radiation having passed through the breast when the breast is radiographed as an absorption contrast image, a supporting stand to support the radiographing main body at an upper position so as to provide a space at a lower position; and a detector supporting member shiftably provided in the space at the lower position of the supporting stand and having a second detector supporting rack to support a detector when the breast is radiographed as a phase contrast image (figure 1).

Regarding claim 2, Ohara or Amitani teaches the supporting stand supports the radiographing main body in such a way that the radiographing main body is movable upwardly or downwardly (figure 1).

Regarding claim 3, Ohara or Amitani teaches the detector supporting member is detachably attached to the radiographing main body (figure 1).

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Regarding claim 4, Ohara or Amitani teaches the detector supporting member is shiftably placed at the lower position of the supporting stand (figure 1).

Regarding claim 5, Ohara or Amitani teaches the second is hinged so as to rotate between a horizontal attitude and a vertical attitude (figure 1).

Regarding claim 6, Ohara or Amitani teaches the detector supporting member further has a third detector supporting rack provided below the second supporting rack (figure 1).

Regarding claim 7, Ohara or Amitani teaches the detector supporting member is provided with a handle (figure 1).

Regarding claim 8, Ohara or Amitani teaches the detector supporting member has a weight of 30 Kg or less (figure 1).

Regarding claim 9, Ohara or Amitani teaches the detector supporting member is electrically connected with the radiographing main body (figure 1).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

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be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-9 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of copending Application No. 10/719332. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are anticipated by the claims of the patent as follows:

Regarding claim 1, the patent claims a radiographing apparatus for mammography, comprising: a radiographing main body including: a radiation source to emit radiation; a breast table on which a beast to be radiographed is placed, the breast table located opposite to the radiation source, and a first detector supporting rack to support a detector to receive radiation having passed through the breast when the beast is radiographed as an absorption contrast image, a supporting stand to support the radiographing main body at an upper position so as to provide a space at a lower position; and a detector supporting member shiftably provided in the space at the lower position of the supporting stand and having a second detector supporting rack to support a detector when the beast is radiographed as a phase contrast image (claim 17).

Regarding claim 2, the patent fails to claim the supporting stand supports the radiographing main body in such a way that the radiographing main body is movable upwardly or downwardly.

It is known that a mammography system having a supporting stand supports a radiographing main body in such a way that the radiographing main body is movable upwardly or downwardly.

It would have been obvious to one of ordinary skill in the art at the time of the invention to adapt the mammography system of the patent with the known stand support, since it would provide better imaging positions.

Regarding claim 3, the patent claims the detector supporting member is detachably attached to the radiographing main body (claim 13).

Regarding claim 4, the patent claims the detector supporting member is shiftably placed at the lower position of the supporting stand (claim 17).

Regarding claim 5, the patent claims the second is hinged so as to rotate between a horizontal attitude and a vertical attitude (claim 1).

Regarding claim 6, the patent claims the detector supporting member further has a third detector supporting rack provided below the second supporting rack (claim 1).

Regarding claim 7, the patent fails to claim the detector supporting member is provided with a handle.

A handle is known for mammography system.

It would have been obvious to one of ordinary skill in the art at the time of the invention to adapt the mammography system of the known handle, since it would provide better apparatus handling.

Regarding claim 8, the patent fails to claim the detector supporting member has a weight of 30 Kg or less.

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It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to adapt the claimed weight for the detector supporting member, since it has been held to be within the general skill of a worker in the art to select a certain weight on the basis of its suitability for the intended use as a matter of obvious design variation.

Regarding claim 9, the patent claims the detector supporting member is electrically connected with the radiographing main body.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-9 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 7103140. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are anticipated by the claims of the patent.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoon Song whose telephone number is (571) 272-2494. The examiner can normally be reached on 9:30 AM - 7 PM, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Glick can be reached on (571) 272 - 2490. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Handwritten signature, likely of a representative, with the initials "HKS" printed below it.